



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,740	09/11/2003	Timothy Allen Musgrove	002566-12	3457

22204 7590 07/14/2005

NIXON PEABODY, LLP  
401 9TH STREET, NW  
SUITE 900  
WASHINGTON, DC 20004-2128

EXAMINER

CHOULES, JACK M

ART UNIT PAPER NUMBER

2167

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/659,740

Applicant(s)

MUSGROVE ET AL.

Examiner

Jack M. Choules

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 15-19, 23-26, 31-62 and 66-89 is/are rejected.
- 7) ☒ Claim(s) 12, 14, 20-22, 27-30, 56, 58 and 63-65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

22

### **DETAILED ACTION**

1. Claims 1-89 are presented for examination. Claims 1-72 being under restriction requirements. Claims 73-89 added by amendment.

#### ***Election/Restrictions***

Applicant's election with traverse of invention I in the reply filed on 23 May 2005 is acknowledged.

2. The examiner at this time reconsiders the restriction requirement, as the main reason for restriction is to reduce the hardship on the examiner of performing multiple searches and the second invention has been found to be very similar to an invention previously rejected in parent application 10/119,311 now patent 6,714,933 examined by the present examiner. Also the same claims were searched for PCT US0423752, by the present examiner (assigned after making the restriction requirement) thus as the non-selected claims have been searched there is no hardship of a second search in the current application thus invention II is rejoined.

Since all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in the Office action mailed on 23 February 2005 is hereby withdrawn.

#### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 2167

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 34-39 and 65-70 rejected under the judicially created doctrine of double patenting over claims 1-6 of U. S. Patent No. 6,714,933 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

5. Claims 34-39 and 65-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,714,933.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the patent are considered to be narrower with the only item added in the application being that of using the gathered product phrase information to create a catalog it is considered obvious to use gathered product data in a catalog.

#### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

7. Claims 31, 37, 57, 42, 44, and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There deficiencies are noted as follows:

Claim 31 has the phrase "the attributes and attribute values sits for each category." The word 'sits' makes no sense, the word is thought to be a typo but what was intended is not clear."

Art Unit: 2167

Claim 37 has the phrase “said crawler” that lacks antecedent basis claim 37 should be changed to depend on claim 34, which does have antecedent basis and seems to be intended by wording and ordering of the claim.

Claim 57 is a system claim that is currently dependent on a method claim 44. This claim is thought to more clearly depend on claim 45, which is a system claim and contains antecedent basis for each identified product. This would put claims 57 and 58 in group I thus they have been treated in the current invention.

Claim 42 and 44, line 1, Lack antecedent basis for “said step of determining allied products” if claims 42 and 44 were changed to depend from claim 41 and 43 respectively antecedent basis would be provided.

Claim 47 line 1, does not have antecedent basis for “said data strings” if claims 47 is changed to depend from claim 46 antecedent basis would be provided.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4, 11, 13, 16-19, 23-26, 45-48, 55, 57, and 60-62 are rejected under 35

U.S.C. 102(B) as being anticipated by Blutinger et al. [hereinafter Blutinger] US 5,231,566.

Art Unit: 2167

10. As to claims 1 and 45, Blutinger teaches a data processing system comprising: “aggregating product information...” (column 8, lines 4-24 and lines 58-64, column 9, lines 38-51, and column 11, lines 28-35), “processing plural product information records...” (column 9, lines 52-68, column 10, lines 1-68, column 11, lines 1-21, and column 12 lines 55-66), “correlating a unique product ID...” (column 10, lines 58-68), “comparing each identified product to categories of taxonomies...” (column 8, lines 27-38 and lines 58-64), “determining attributes...” (column 8, lines 58-64, column 9, lines 38-51, fig 3 and fig 4), “creating product specifications...” (column 11, lines 6-21 and fig 3 and fig 4), and “storing the product” (column 12, line 67-68 and column 13 lines 1-10). Note: some of these steps or elements are preformed manually in Blutinger's system however, the language of the claims is considered broad enough to include manual operations.

11. As to claim 23, Blutinger teaches a system further comprising (all other elements addressed in rejection of claim 1 above): “repeating the processing and correlating steps” (column 10, lines 49-52).

12. As to claims 2, 3, 24, 25, 46, and 47, Blutinger teaches a system further comprising uniform product codes (column 9, lines 52-62 and column 11, lines 36-48).

13. As to claims 4, 26, and 48, Blutinger teaches a system further comprising “similar product name” (column 9, lines 63-68, column 10 lines 1-15 note each work compared” and column 11, lines 36-48 note names are entered so at least a portion of words compared would be names).

14. As to claims 11 and 55, Blutinger teaches “subgroups” and “super groups” (figure 2 and figure 3).

Art Unit: 2167

15. As to claim 13, and 57, Blutinger teaches the operation of “determining a product name” (column 8, lines 58-64) note: done by vendor.

16. As to claims 16 and 60, Blutinger teaches the operation of “generating a description” (column 8, lines 39-64, column 9, lines 38-51, figure 3 and figure 4) note: the all the attributes that are selected and entered to become part of a record in one of the catalog databases are used in whole to generate the product description in any of the catalogs.

17. As to claims 17 and 61, Blutinger teaches ID codes (column 9 lines 52-62) parsing is inherent as the computer is matching two strings of numerals.

18. As to claims 18, 19, and 62, Blutinger teaches, “repeating” (column 10 lines 49-56).

***Claim Rejections - 35 USC § 103***

19. Claims 5-10, 15, 31, 32, 49-54, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blutinger as applied to claims 1, 4, 45, and 48 in the paragraphs above.

20. As to claims 5-10 and 49-54, Blutinger does not teach the linguistic and practical steps in set forth in theses claims to detect the product information records correspond to the same. However Blutinger did specify manual comparison (column 10, lines 16-22) and it would be at least implicit that a human operator would ignore differences in capitalization, generic nouns, and selected adjectives that set forth no real difference. It would also be obvious to take in to consideration the price, merchant coverage and any synonyms, hyponyms and hypernyms to convey more clues as to whether products are the same or different, because doing these things would improving the selectivity of the system.

Art Unit: 2167

21. As to claims 15 and 59, Blutinger did detail using "product images" (column 8 lines 38-57), however he did not specify these coming from the product information sources (the vendor or input sheets Blutinger) or being entered in association with the product information records, as the vendors would have access to product art it would be obvious to let them submit it and have it input into the system for linking to an associated product record and when input data is reviewed to determine if a new product or one previously on the system to be linked by assigning the product number of the same product already on the system to also determine the image that best represents the product to be linked to product record(s) for use in the catalog(s).

22. As to claim 31, Blutinger did not set forth a method for the comparing steps as this is manually done in his system (column 8, lines 58-64) however it would be obvious to examine attributes and attribute values for each category and product information records already classified in order to assist the system or operator to find a category that fits the product in an efficient manner.

23. As to claim 32, Blutinger did not detail whether his system assigning different product numbers for products that differ only as to color, However it would be obvious to one of skill in the art at the time of the invention as the items are to be ordered by product number (column 11, lines 6-21).

24. Claims 33, 39, 40, 41, 42, and 70, 72, are rejected under 35 U.S.C. 103(a) as being unpatentable over Blutinger as applied above in claims 1, 23, 45 and further in view of Call 6,154,738.



Art Unit: 2167

25. As to claim 33, Blutinger does not detail “generating a crawler”. Call does detail “generating a crawler...” (column 9, lines 28-35).

26. It would have been obvious to one of skill in the arts at the time of the invention to combine the teachings of Call with those of Blutinger because this would eliminate the paperwork and second hand data entree as instead of having the vendor fill out and submit a worksheet for each store or outlet that he send his products to for sale he would simply maintain a website with his product information and send his URL as a seed for a crawler for the cataloging system which would index and provide access to the data for input to the catalog further automating the data processing system.

27. As to claims 39-42, 71, and 72, in the system with Call combined with Blutinger it would be obvious to determine allied products by following links as web browsers such as that of Call follow links to expand the search and a link on a product page is likely to go to an allied product (a product that is interrelated such as ink or toner for a printer).

28. Claims 34-38 43, 44, and 66-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsch et al [hereinafter Kirsch] Patent No. US 5,920,854 in view of Call Patent No. US 6,154,738.

29. As to claims 34-37, and 66-69, Kirsch disclosed the invention substantially as claimed including a data processing system {DP} comprising “generating a crawler. (column 5, lines 61-67 and column 6, lines 1-3), gathering phrase information (column 6, lines 15-36), “phrase

Art Unit: 2167

information and characteristics” (column 6, lines 15-36), and “creating a catalog” (column 11, lines 6-20 and 44-58).

30. Kirsch does not detail “product information” as it is set up for generic documents. Call describes a system including a web crawler searching for product information and finely producing a catalog (column 9, lines 28-35 and column 13, lines 32-54 and column 14 lines 3-37).

31. It would have been obvious to one of ordinary skill in the DP art at the time of the applicants invention to combine the teachings of Call with Kirsch as because Kirsch provides a structure of a system to provide for the searching of a chosen information from general documents, Call provides for a specific use for a web browser system without getting into the specific structure of the web browser. Further Carl teaches advantages his specific use provides by providing product data and catalogs (column 1 lines 34-53, column 13, lines 45-67, and column 14 lines 1-37) improving the utility of the DP system. Further the changes implementing product data are directed to specify a specific type or class of non-functional data (being recalled from memory does not make data functional). Non-functional descriptive material cannot render nonobvious an invention that would otherwise have been obvious as modifying a the data searched for in the documents to be specifically product data is presumed to be well within the level of ordinary skill in the art at the time of the invention.

32. As to claims 38 and 70, Kirsch in light of Blutinger details to a comparing said product phrase information categories of a taxonomy...” (column 7 lines 32-40).

33. As to claims 43 and 44, in the system with Call combined with Kirsch it would be obvious to determine allied products by following links as web browsers such as that of Call

Art Unit: 2167

follow links to expand the search and a link on a product page is likely to go to an allied product (a product that is interrelated such as ink or toner for a printer).

34. Claims 73-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blutinger as applied to claims 1 and 45 above, and further in view of Kirsch, Patent No. US 5,920,854, also with Call, Patent No. US 6,154,738, provided as evidence for combination.

35. As to claims 73-78, and 82-88, Blutinger did not detail, "generating a crawler," gathering phrase information and "phrase information and characteristics" although he did describe product information collection. Kirsch did describe a DB system further comprising "generating a crawler" (column 5, lines 61-67 and column 6, lines 1-3), gathering phrase information (column 6, lines 15-36), "phrase information and characteristics" (column 6, lines 15-36), and "creating a catalog" (column 11, lines 6-20 and 44-58).

36. It would have been obvious to one of ordinary skill in the DP art at the time of the applicants invention to combine the teachings of Kirsch with Blutinger as because Kirsch provides a structure of a system to provide for the automatic searching for and collection of a chosen information from general documents using a specific, Call describes a for a specific use for a web crawler in a system for product information collection. Further Carl teaches advantages his specific use provides by providing product data and catalogs (column 1 lines 34-53, column 13, lines 45-67, and column 14 lines 1-37) improving the utility of the DP system by providing automation information collection with a web crawler.

Art Unit: 2167

37. As to claims 79 and 89, Kirsch in light of Blutinger details to a comparing said product phrase information categories of a taxonomy..." (column 7 lines 32-40).

38. As to claims 80 and 81, in the system with Blutinger combined with Kirsch it would be obvious to determine allied products by following links as web browsers such as that of Call follow links to expand the search and a link on a product page is likely to go to an allied product (a product that is interrelated such as ink or toner in an allied product to a printer).

***Allowable Subject Matter***

39. Claims 12, 14, 20-22, 27-30, 56, 58, and 63-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

40. The following is a statement of reasons for the indication of allowable subject matter:

- a. As in claim 12, and 56 "assigning a confidence rating to each scraped attribute value; and merging the attribute values into a set of product specification attributes based on the confidence ratings."
- b. As in claim 14 and 58 "selecting the best name of multiple variant product names from product information records in a group; cleansing the best name into a product name that is of a predetermined style."
- c. As in claims 20-22, 28-30, and 63-65, "determining when an outcome of one or more of said processing, correlating, comparing and determining steps falls below a predetermined confidence level and flagging said outcome for further processing.

Art Unit: 2167

d. As in claim 27-30, "assigning a clustering confidence score to the grouping of information produced by the processing step, and a categorizing confidence score to the categories produced by the comparing step, and repeating said repetition step until said confidence scores stabilize."

### *Conclusion*

41. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

e. Povilus US 6,154,738 A Catalog creation with collection, taxonomy and unique ID's

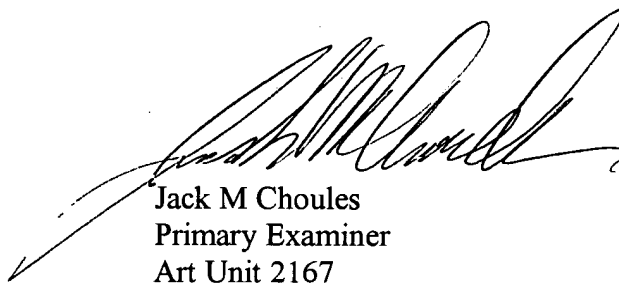
f. Wong et al US 5,890,175 B1 Catalog creation with collection and taxonomy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack M. Choules whose telephone number is (571) 272-4109. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 and will be 571-273-8300 beginning on 15 July 2005.

Art Unit: 2167

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack M Choules  
Primary Examiner  
Art Unit 2167

11 July 2005